



Clinical practice

Lessons from a decade of technical–scientific opinions in obstetrical litigation

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ABSTRACT

The authors aimed to assess the Portuguese circumstances concerning situations of medico-legal dispute in Obstetrics, evaluate the conclusions of technical–scientific opinions and analyze their consequences.

The analysis of all cases of Obstetrics medical responsibility examined in Medico-legal Council since the creation of the National Institute of Legal Medicine was performed. Technical–scientific opinions of those files were examined according to the existence of a causal link and of infringement of the 'leges artis'.

The most common reasons for dispute in Obstetrics were perinatal asphyxia (50%), traumatic injuries of the newborn (24%), maternal sequelae (19%) and issues related to prenatal diagnosis and/or obstetric ultrasound (5.4%). In the technical–scientific opinions of files examined, the existence of a causal link was established in 17.4%, and the infringement of the 'leges artis' was suggested in 15.5% of cases, numbers which have grown significantly over the years and which are particularly relevant in the proceedings of perinatal asphyxia and traumatic lesions of the newborn. In 11% of cases the opinion was inconclusive due to the poor quality of the clinical process sent for analysis.

These results highlight the impact that litigation can have on the professional activity and personal lives of obstetricians. It should alert them for the need to better fulfill medical clinical files in order to reduce or avoid medico-legal conflicts, as well as to the fact of the increasing practice of defensive medicine and its consequences in daily clinical routine for doctors and patients.

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1. Introduction

In recent years, we have been witnessing a growing number of cases of professional responsibility in the provision of health care, a trend followed by the specialty of Obstetrics/Gynecology.

With recent technological and clinical advances, the general public has acquired a high expectation of favorable results, and they consider that any deviation from this expectation must be someone's responsibility, usually the physician and/or staff who provided assistance. They do not take into account (nor it is released when there is media coverage of these cases) the individual biological variations or that technology itself has its limits.

As a result of these complaints, and facing the threat of professional liability cases, many doctors change their clinical attitude to a defensive medicine practice, whose exercise may not always be beneficial to the patient, by prescribing unnecessary exams or even by giving up or avoiding areas of activity more susceptible to litigation.^{1–16}

The knowledge that most health professionals have on this issue is the result of the America's circumstances, where the problem of medical liability is present in day-to-day professional routine and has dramatic consequences at the level of daily activity and on professional choices. It is a situation that exists for a few decades, that led to the escalation of insurance premiums which become a threaten to the obstetric practice.^{1–16}

In Europe, the awareness of the population to the possibility of medico-legal prosecution against doctors is a recent phenomenon, still with few studies on the topic. The same happens in Portugal, where there was little notion of the real scale of the problem, and of the possible consequences in professionals' daily clinical practice.

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In Portugal, although there are some studies on medical liability in general and in other specialities, there has been none on Obstetrics in particular, besides the already developed by the author in 2007.^{17–19} Then it was found that about half of obstetricians have already been involved in at least one case. A similar proportion admitted to practice a positive defensive medicine, due to fear of medical liability processes, but 25% of specialists and 10% of interns also admitted to practice a negative defensive medicine.^{17,18}

Given that Obstetrics continues to be one of the worst hit areas in the international literature for medical liability processes and given their consequences in daily clinical practice, it seemed important to assess the Portuguese circumstances concerning situations of medico-legal dispute, to evaluate the conclusions of technical–scientific opinions and analyze their consequences. To achieve this purpose we analyzed the Obstetrics cases examined in the Medico-legal Council since the creation of the National Institute of Legal Medicine and Forensic Sciences in 2001 until 2011, which would be representative of the national situation concerning legal proceedings.

2. Material and methods

Review and analysis of the cases of Medical Liability examined in the Medico-legal Council between 2001 and 2011, as well as their respective technical–scientific opinions. This analysis was carried out after formulating an application to consult the files to the President of the Directing Council of the National Institute of Legal Medicine and Forensic Sciences, which was accepted.

The analysis of this sample was performed by drawing a grid on which were recorded the reasons/causes that led to the establishment of cases, the sequence of events that culminated in the disputed event, the conclusion of technical–scientific opinions, the establishment of a causal link or a suggestion of violation of the 'leges artis'.

We performed a comprehensive characterization of the sample of medico-legal cases in Obstetrics. All parameters were characterized by the determination of absolute frequencies and relative frequencies. The relative frequency of each cause for prosecution, each medical intervention that led to the complaint, the quality of the process and the result of expertise were determined per year. The annual change was graphed and the test of hypothesis of linear trend in relative frequency over the years, was performed using the chi-square test for trend. The association between each of the parameters of influence in medical intervention and each of the grounds of the complaints was evaluated by making use of the chi-square test. The level of significance used in this analysis was 5%. The statistical software SPSS® v19.0.0.2 was used.

3. Results

From a total of 1261 cases analyzed in the period considered, 212 were selected regarding the specialty of obstetrics/gynecology – 168 were related to Obstetrics – which represents the sample of our study – and 44 to Gynecology.

In Obstetrics, the several causes found could be divided into 5 categories: perinatal asphyxia (fetal or neonatal death, permanent neurologic sequelae in the newborn), traumatic lesions in the newborn (result of instrumented delivery, breech vaginal delivery or shoulder dystocia), prenatal diagnosis/obstetric ultrasound, maternal sequelae (postpartum complications, including postpartum hemorrhage, postpartum hysterectomy, maternal mortality, surgical complications) and others (referring to all other situations not covered by the preceding groups). In the 168 cases analyzed, we found that the situations leading to prosecution were, in decreasing frequency order, perinatal asphyxia (50%), traumatic injuries of the newborn (24.4%), maternal sequelae (19%), prenatal

diagnosis (5.4%) and other situations related to abortion and its treatment (1.2%). Medical interventions leading to the Obstetrics complaints analyzed can be grouped into lateness/absence in caesarean delivery (50%), no appraisal of complaints and/or exams (28%) and instrumentation of deliveries (22%). Further analysis on the causes and medical interventions that led to litigation are described elsewhere.²⁰

Regarding the quality of the clinical files sent for examination, we found reference to their poor quality in 89.5% of cases – 39.8% due to insufficient information, 36% due to the absence of data and 13.7% due to poor quality copies. In about 11% of cases, the technical–scientific opinion was inconclusive due to the poor quality of the clinical process sent for analysis.

In cases reviewed, it was found that in 15.5% of their respective opinions, the role of the physician in question was not the most appropriate to the situation described, a trend that has been increasing over the years, $p = 0.011$. The existence of a causal link appears suggested in 17.4% of opinions, a trend that has increased over the years, $p = 0.011$. Both conclusions are mentioned as inconclusive in 10.6 and 11.2% of cases, respectively – Fig. 1.

Regarding the distribution of these opinions we found that: in perinatal asphyxia a causal link was established in 21.4% of cases and was inconclusive in 15.5%. An infringement of the 'leges artis' was suggested in 20.2% of cases, and was inconclusive in 16.7%. In traumatic lesions of the newborn, a causal link was established in 19.5% of cases and was inconclusive in 9.8%. An infringement of the 'leges artis' was suggested in 14.6% of cases and was inconclusive in 12.2%. In maternal sequelae, a causal link was established in 15.6% of cases and inconclusive in 6.3%. An infringement of the 'leges artis' was suggested in 9.4% of cases and was inconclusive in 6.3%. In prenatal diagnosis, a causal link was established in 11.1% of cases and was inconclusive in equal numbers. An infringement of the 'leges artis' was not suggested in any of the cases examined – Fig. 2.

4. Discussion/comment

The sample selected seemed to meet the necessary conditions to analyze the proposed objective. In Portugal, it is for the Medico-legal Council to: exercise functions of technical and scientific advice; advise on technical and scientific expertise in the field of legal medicine and other forensic sciences issues; monitor and evaluate expert activity developed in the National Institute of Legal Medicine and Forensic Sciences, pronounce, in its own initiative or at request of the chairman of the directive board on matters related to the tasks of the Institute; develop recommendations for the medical-legal and forensic activity; designate two personalities of recognized merit to the Ethics Committee. It is formed by: the chairman of the directive council of the National Institute of Legal Medicine and Forensic Sciences, the vice president and the vocals, a representative of the regional disciplinary boards of each regional section of the Medical Association, two university teachers of each of the scientific fields of clinical surgery, internal medicine, obstetrics and gynecology, and law; a university professor of each of the following scientific areas: pathology, ethics and/or medical law, orthopedics and traumatology, neurology, neurosurgery and psychiatry. When necessary, it may request the cooperation of teachers of other subjects or other higher education institutions as well as experts of recognized merit. The technical and scientific opinion can be requested by a member of the Government responsible for justice, by the Supreme Judicial Council, by the Attorney General's Office or by the chairman of the directive council of the National Institute of Legal Medicine and Forensic Sciences.

Thus, for the evaluation of the national situation of Obstetrical Medical Liability cases, it seemed essential to review the cases referred to the Medico-legal Council, which with the creation of the

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